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94-19

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June 1, 1994

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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

In Re: Docket No. 94-19

Dear Mr. Caton:

An original and five copies of this letter are submitted to you for inclusion in the above-referenced docket. As you are aware, comments and reply comments have already been submitted in this docket, and the singular purpose of this letter is to bring to your attention a possible anomaly in the rules which will derive from the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding (FCC 94-46, released March 11, 1994).

Our client, W. Russell Withers, Jr., is licensee of television station KREX-TV, Channel 5, Grand Junction, Colorado. Mr. Withers also operates full power satellite stations at Durango, Colorado (KREZ-TV, Channel 6) and at Glenwood Springs, Colorado (KREG-TV, Channel 3).

At paragraph 67 of the Commission's Notice, the Commission has noted that satellite stations "...will be assessed a fee on the same basis as other full power stations in the same market." Because KREG-TV is in the Denver market (ranked No. 20) and KREZ-TV is in the Albuquerque market (ranked No. 48), this anomalous and unfair situation would cause Mr. Withers to be assessed more in fees for each of his satellite stations than are assessed against his parent station, and by a considerable amount. The fee for KREZ-TV would be \$12,000 per year and for KREG, \$16,000. KREX-TV's fee would be only \$5,000 since it is in a below top-100 market.

The Commission will clearly understand that, particularly in the Mountain Time Zone, satellite stations serve relatively sparsely-populated areas. For example, Durango, Colorado, is located in La Plata County, Colorado, but serves only a small

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portion of that county with a Grade A signal and does not even serve the entire county with its Grade B signal. A very small portion of Montezuma County, Colorado, is served by the station's Grade B contour, as are small portions of San Juan and Rio Ariva Counties, New Mexico. It is unlikely that the potential population served by KREZ-TV exceeds 100,000, and to charge it the same fee as a station in Albuquerque -- a city which alone has a population of over 330,000 -- is so disproportionate as to shock the conscience. A similar analysis applies to KREG-TV, which is licensed to Glenwood Springs, located in Garfield County, Colorado, which has a population of only 12,200. While KREG-TV's Grade B contour encompasses portions of several counties, the aggregate population within the Grade B contour will clearly not approach the population of Denver alone, which is almost 500,000 people.

We are confident that it is not the intention of the Commission to create a situation which would so severely penalize licensees who have sought to bring much-needed television service to sparsely-populated areas. In that regard, we would associate ourselves with Comments filed by the National Association of Broadcasters on April 7, 1994, in which it has suggested that satellite stations should be treated as translators or other secondary television stations, and, at most, be required to pay an annual regulatory fee of \$135. The similarity of roles between translators and satellite stations is obvious, and, indeed, the burden on the Commission in regulating satellites is substantially less than that of regulating full power, independently-operated, television stations. The intent of Congress in differentiating fees by market size clearly was meant to require stations serving the largest markets to bear a higher proportion of the fee payments that would be made. As noted, however, the aggregate fees paid by a small market station such as KREX-TV, operating satellite stations, would exceed those of major market stations, and by a considerable amount.

Even assuming, arguendo, that the Commission would differentiate between its treatment of translators and satellite stations, at a bare minimum it should never require a satellite station to pay more in fees than its parent station is required to pay. This result would be consistent with Section 9 of the Communications Act which the Commission's rulemaking is seeking to implement. While Congress has established a fee range of between \$4,000 and \$18,000 for commercial television stations, it did not establish a specific fee requirement for satellite television stations, clearly leaving this matter up to the expertise of the FCC. (See Pub.L. No. 103-66, § 6003(a)(1) (1993)). The intent of Section 9 is not to require that every station in an ADI be assessed a similar amount, but rather the Commission has been directed to recover costs for such regulatory activities as

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enforcement, rulemaking, user information, international activities, etc. (Pub.L. No. 103-66, § 6003(a)(1)). The auxiliary role of a satellite station is historically clear and well-documented. Thus, the cost to the Commission of the regulation of a satellite will be substantially less than that of a parent. Indeed, much of the cost would be subsumed within the cost of the regulation of the parent station.

We appreciate the Commission's thoughtful consideration of the positions delineated herein and request that it apply a rule of reason and mitigate the fees to be assessed against rural satellite operations.

Respectfully submitted,



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Counsel for
W. Russ Withers, Jr.

CC (by hand delivery):

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Commissioner James H. Quello
Commissioner Susan Ness
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